HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.6136 of 2007

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Between:

The Thippaluru Primary Agricultural
Co-operative Society Limited,
Yerraguntla Village & Mandal. …Petitioner.

And

Commercial Tax Officer-II,
Kadapa & others. ...Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri P. Veera Reddy

29th March 2007

Per G.S. SINGHVI, C.J.

This is a petition for quashing the sale of Ac.6.36 cents of land comprised in Survey No.19 of Thippaluru Village, Yeraguntla Mandal,

Kadapa District by the authorities of the Commercial Taxes Department for recovery of the arrears of tax payable by M/s. Lakshmi Oil Producers, Valasapalli Road, Yerraguntla under the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the 1957 Act').

The petitioner is a co-operative society registered under the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the 1964 Act'). In 1995, the petitioner is said to have given loan of Rs.72,000/- to Sri Yenuga Avula Chenna Reddy of Thippaluru Village. The latter is said to have mortgaged the land in question along with Ac.3.38 cents comprised in Survey No.533 of Yerragudipadu Village in favour of the petitioner. According to the petitioner, a sum of Rs.3,12,253/- is outstanding against the borrower as on 28-2-2007. Another sum of Rs.26,580/- is said to be outstanding against the borrower in the account of crop loan. The petitioner claims that on an application made by it, which was registered as Claim No.159/1999-2000, Deputy Registrar-cum-Officer on Special Duty, Kadapa, passed award dated 12-7-1999 against the borrower.

It is borne out from the record that Sri Yenuga Avula Chenna Reddy was doing business under the name and style of M/s. Lakshmi Oil Producers, Valasapalli Road, Yerraguntala, which was registered as a dealer under the 1957 Act. For the assessment years 1999-2000 and 2000-2001, the dealer did not pay the dues of sales tax amounting to Rs.29,00,481/- and Rs.14,76,150/- respectively. Therefore, after issuing notices to Sri Yenuga Avula Chenna Reddy, Deputy Commercial Tax Officer-II, Kadapa (respondent No.4) initiated proceedings under the Andhra Pradesh Revenue Recovery Act, 1864 and attached the land measuring Ac.6.36 cents comprised in Survey No.19 of Thippaluru Village. This was followed by notification dated 23-2-2007 for sale of the land. At that stage, the President of the petitioner submitted representation dated 14-3-2007 to respondent No.4 with the request

that a sum of Rs.3,12,253/- be remitted to the petitioner out of the proceeds of auction. Commercial Tax Officer-II, Kadapa (respondent No.1) sent reply dated 15-3-2007 to the Secretary of the petitioner society that in terms of Section 16-C of the 1957 Act, the arrears of tax under the 1957 Act constitute first charge over the properties mortgaged by Sri Yenuga Avula Chenna Reddy and, therefore, the department will have precedence in the matter of recovery of taxes.

Sri P. Veera Reddy argued that award dated 12-7-1999 passed by the Deputy Registrar-cum-Officer on Special Duty is conclusive of the petitioner's right to recover its dues from the property mortgaged by Sri Yenuga Avula Chenna Reddy and the respondents cannot unilaterally auction the property and recover the amount of arrears of tax to the exclusion of the petitioner's right. Learned counsel submitted that by virtue of Section 92 of the 1964 Act, the mortgage created in favour of the petitioner has priority over any claim of the government and, therefore, the auction of the property mortgaged by Sri Yenuga Avula Chenna Reddy is liable to be invalidated.

In our opinion, there is no merit in the argument of the learned counsel and the writ petition is liable to be dismissed summarily.

Section 16(C) of the 1957 Act and Section 92 of the 1964 Act, which have bearing on the petitioner's prayer read as under:

"The 1957 Act

16C. Liability under this Act to be the first charge:- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of dealer, or such person.

The 1964 Act

92. Priority mortgage over certain claims:

A mortgage created in favour of Financing Bank/Primary

Agricultural Co-operative Society shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 granted subsequent to the creation of the mortgage.

A reading of the above reproduced provisions shows that the priority of the mortgage created in favour of financing bank/primary agricultural co-operative society is qua government claims arising from a loan under the Land Improvement Loans Act, 1883 and not qua any other charge. As against this, Section 16C of the 1957 Act, which begins with non-obstante clause gives overriding effect to the right of the government to recover the tax, penalty etc. payable under that Act and the same constitutes first charge on the property of the dealer or such person. If the two provisions are read together, there is no escape from the conclusion that the right of the government to recover the tax under the 1957 Act has priority over the right of the petitioner in respect of mortgage created by Sri Yenuga Avula Chenna Reddy.

In view of the above, we hold that the action taken by the respondents to auction the property mortgaged by Sri Yenuga Avula Chenna Reddy does not suffer from any legal infirmity and the petitioner does not have the right to seek remittance of a sum of Rs.3,12,253/- out of the sale proceeds.

There is another reason for declining relief to the petitioner. It has neither questioned the recovery notices issued by the competent authority under the 1957 Act nor it has impleaded Sri Yenuga Avula Chenna Reddy as a party to the writ petition.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.7848 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

29th March, 2007.

C.V.NAGARJUNA REDDY, J.

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